



February 22, 2008

ENGROSSED SENATE BILL No. 195

DIGEST OF SB 195 (Updated February 21, 2008 11:45 am - DI 97)

Citations Affected: IC 8-2.1; IC 9-24; IC 9-25; IC 27-18; noncode.

Synopsis: Motor vehicles and insurance. Specifies requirements for financial responsibility and licensure of a contract carrier that transports railroad employees. Specifies requirements for suspension and reinstatement of a driver's license related to convictions or judgments for operating a motor vehicle without financial responsibility. Provides for registration of a vehicle protection product warrantor and specifies requirements for sale of vehicle protection product warranties.

Effective: July 1, 2008.

Young R Michael, Arnold, Walker
(HOUSE SPONSORS — AUSTIN, TORR)

January 8, 2008, read first time and referred to Committee on Insurance and Financial Institutions.

January 24, 2008, amended, reported favorably — Do Pass.

January 28, 2008, read second time, ordered engrossed.

January 29, 2008, engrossed. Read third time, passed. Yeas 45, nays 2.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Insurance.

February 21, 2008, amended, reported — Do Pass.

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ES 195—LS 6799/DI 106+



February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 195

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-2.1-22-46, AS AMENDED BY P.L.1-2006,
2 SECTION 152, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2008]: Sec. 46. (a) Notwithstanding any other
4 provision of this chapter, common and contract carriers and other
5 carriers engaged in the transportation of passengers or household goods
6 for hire, over regular or irregular routes, whether operating pursuant to
7 a certificate or permit or as an exempt carrier under section 2.1(5) of
8 this chapter, shall file with the department proof of financial
9 responsibility in the form of surety bonds or policies of insurance or
10 shall qualify as a self-insured. The minimum level of financial
11 responsibility required shall be **as follows:**

- 12 **(1) For a contract carrier that transports railroad employees,**
13 **a combined single limit of three million dollars (\$3,000,000)**
14 **for bodily injury and property damage in any one (1)**
15 **accident.**
16 **(2) For a contract carrier, common carrier, or other carrier**
17 **not described in subdivision (1), the minimum level established**

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under 49 U.S.C. 13906(a)(1).

(b) A person who violates this section commits a Class C infraction. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment for violating this section.

(c) In addition to any other penalty imposed upon a person for a conviction of a Class A misdemeanor under subsection (b), the law enforcement agency may impound the vehicles owned by the person. Unless the vehicle is impounded or forfeited under a law other than this section, the vehicle shall be released to the carrier when the carrier complies with this section.

SECTION 2. IC 9-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. **(a)** Except as provided in section 7 of this chapter, an individual must:

(1) have a valid Indiana operator's, chauffeur's, or public passenger chauffeur's license; and

(2) be at least eighteen (18) years of age; to drive a medical services vehicle upon an Indiana highway.

(b) Except as provided in section 7 of this chapter, an individual must have a valid public passenger chauffeur's license to operate a contract carrier vehicle that:

(1) is regulated under IC 8-2.1-22; and

(2) transports railroad employees upon an Indiana highway.

SECTION 3. IC 9-25-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) A person who knowingly:

(1) operates; or

(2) permits the operation of;

a motor vehicle on a public highway in Indiana commits a Class A infraction unless financial responsibility is in effect with respect to the motor vehicle under IC 9-25-4-4. However, the offense is a Class C misdemeanor if the person knowingly or intentionally violates this section and has a prior unrelated conviction or judgment under this section.

(b) Subsection (a)(2) applies to:

(1) the owner of a rental company that is referred to in IC 9-25-6-3(e)(1); and

(2) an employer that is referred to in IC 9-25-6-3(e)(2).

(c) **Except as provided in subsection (d)**, in addition to any other penalty imposed on a person for violating this section, the court may recommend the suspension of the person's driving privileges for one (1) year. However, if, within the five (5) years preceding the conviction **or judgment** under this section, the person had: **α**

(1) one (1) prior unrelated conviction or judgment under this

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section, the court shall recommend the suspension of the person's driving privileges for one (1) year; **or**
(2) two (2) or more prior unrelated convictions or judgments under this section, the court may recommend the suspension of the person's driving privileges for not more than five (5) years.

In determining the period of suspension imposed under subdivision (2), the court shall consider all relevant circumstances concerning the person's unlawful operation of the motor vehicle, including whether the person was involved in an accident and whether the accident caused property damage or serious bodily injury.

(d) In addition to any other penalty imposed on a person for violating this section, if:

(1) the person was involved in an accident that resulted in the death of a person; and

(2) the person had one (1) or more prior unrelated convictions or judgments under this section within the five (5) years preceding the conviction or judgment under this section;

the court shall recommend the suspension of the person's driving privileges for ten (10) years.

(d) (e) Upon receiving the recommendation of the court under subsection (c) or (d), the bureau shall suspend the person's driving privileges for the period recommended by the court.

SECTION 4. IC 9-25-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 10. Judicial Reinstatement of Driving Privileges

Sec. 1. This chapter applies only to a person whose driving privileges have been suspended under IC 9-25-8-2 for failure to maintain proof of financial responsibility for a motor vehicle.

Sec. 2. As used in this chapter, "petitioner" means a person seeking to have the person's driving privileges reinstated or the period of suspension modified in accordance with this chapter.

Sec. 3. (a) A person whose driving privileges have been suspended under IC 9-25-8-2 may petition a court to:

(1) reinstate the person's driving privileges; or

(2) modify the period of suspension;

by filing a petition with the court that suspended the person's driving privileges.

(b) A petition filed under this section must include the following:

(1) The date on which the person's driving privileges were suspended.

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(2) The period for which the person's driving privileges were suspended.

(3) A description of any other penalties imposed on the person for failure to maintain proof of financial responsibility.

(4) A list of all convictions or judgments the person has accumulated for failure to maintain proof of financial responsibility.

(5) A brief description of why the person is entitled to relief under section 4(b) of this chapter.

(6) A brief description of any other reasons that the person believes that the person is entitled to have the person's driving privileges reinstated or the period of suspension modified.

(c) A petition filed under this section must be verified.

Sec. 4. (a) After receiving a petition filed under this chapter, a court may:

(1) summarily dismiss the petition; or

(2) give notice to the prosecuting attorney and set the matter for hearing to determine whether the person's driving privileges should be reinstated or the period of suspension should be modified.

(b) A court may grant a petition filed under this chapter if the court finds that:

(1) the circumstances that caused the petitioner to fail to maintain proof of financial responsibility:

(A) no longer exist; or

(B) are unlikely to reoccur;

(2) the petitioner:

(A) is able to provide proof of financial responsibility; or

(B) will be able to provide proof of financial responsibility when the period of suspension is no longer in effect; and

(3) the petitioner is likely to maintain proof of financial responsibility in the future.

Sec. 5. (a) If the court grants a petition under this chapter, the court shall recommend that the bureau reinstate the person's driving privileges or modify the period of suspension.

(b) Upon receiving the recommendation from the court under subsection (a), the bureau shall:

(1) reinstate the person's driving privileges; or

(2) modify the period of suspension;

in accordance with the recommendation of the court.

SECTION 5. IC 27-18 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,

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ARTICLE 18. VEHICLE PROTECTION PRODUCTS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Administrator" means a third party other than the warrantor that is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

Sec. 3. "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

Sec. 4. "Department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 5. "Incidental costs" means the expenses specified in the warranty that are incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs include:

- (1) insurance policy deductibles;**
- (2) rental vehicle charges;**
- (3) the difference between the:**
 - (A) actual value of the stolen vehicle at the time of theft;**
 - and**
 - (B) cost of a replacement vehicle;**
- (4) sales taxes;**
- (5) registration fees;**
- (6) transaction fees; and**
- (7) mechanical inspection fees.**

Sec. 6. "Vehicle protection product" means a product that is designed to prevent the loss of or damage to a vehicle resulting from theft.

Sec. 7. (a) "Vehicle protection product warrantor" or "warrantor" means a person that is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement.

(b) The term does not include an authorized insurer providing a warranty reimbursement insurance policy.

Sec. 8. "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent the loss of or damage to a vehicle from a specific cause, the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform under the terms of the warranty.

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1 **Sec. 9. "Warranty holder" means a person that:**

2 (1) purchases a vehicle protection product; or

3 (2) is a permitted transferee of a vehicle protection product.

4 **Sec. 10. "Warranty reimbursement insurance policy" means a**
 5 **policy of insurance that is issued to the vehicle protection product**
 6 **warrantor to:**

7 (1) provide reimbursement to the warrantor for; or

8 (2) pay on behalf of the warrantor;

9 **all covered contractual obligations incurred by the warrantor**
 10 **under the terms and conditions of the vehicle protection product**
 11 **warranties issued by the warrantor.**

12 **Chapter 2. Applicability**

13 **Sec. 1. A vehicle protection product may not be sold or offered**
 14 **for sale unless a seller, warrantor, or administrator complies with**
 15 **this article.**

16 **Sec. 2. A warranty, indemnity agreement, or guarantee that is**
 17 **not provided as a part of a vehicle protection product is not subject**
 18 **to the provisions of this article.**

19 **Chapter 3. Registration of Vehicle Protection Product**
 20 **Warrantors**

21 **Sec. 1. Except as provided in section 5 of this chapter, a person**
 22 **may not:**

23 (1) operate as a warrantor; or

24 (2) represent to the public that the person is a warrantor;
 25 **unless the person is registered with the department under this**
 26 **chapter.**

27 **Sec. 2. (a) A person who:**

28 (1) operates as a warrantor; or

29 (2) represents to the public that the person is a warrantor;
 30 **must register with the department by filing an application on a**
 31 **form prescribed by the commissioner.**

32 **(b) An application filed under subsection (a) must contain the**
 33 **following information:**

34 (1) The warrantor's name, any fictitious name under which
 35 the warrantor does business in Indiana, the principal location,
 36 mailing address, and telephone number of the warrantor, and
 37 corresponding information for any offices maintained in
 38 Indiana.

39 (2) The name and address of the agent of the warrantor for
 40 service of process in Indiana, if other than the warrantor.

41 (3) The names of the warrantor's executive officer or officers
 42 directly responsible for the warrantor's vehicle protection

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product business.

(4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

(5) A copy of the warranty reimbursement insurance policy or policies or other financial information required by IC 27-18-4-1.

(6) A copy of each warranty that the warrantor proposes to use.

(7) A statement indicating under which subdivision of IC 27-18-4-1 the warrantor qualifies to do business as a warrantor.

Sec. 3. (a) A registration must be:

(1) updated not later than thirty (30) days after any change that makes information previously provided under section 2(b) of this chapter no longer correct; and

(2) renewed on an annual basis.

(b) If a warrantor registered under section 2 of this chapter fails to renew the registration by the registration deadline, and a renewal is not filed within thirty (30) days, the warrantor shall be made inactive by the commissioner.

Sec. 4. The department may establish:

(1) a fee for the issuance of a registration; and

(2) a fee for the renewal of registration;

under this chapter in an amount sufficient to implement this article. Fees collected under this section shall be deposited in the department of insurance fund established by IC 27-1-3-28.

Sec. 5. An administrator or person that sells or solicits a sale of a vehicle protection product but is not a warrantor is not required to register as a warrantor or to be licensed under this title to sell a vehicle protection product.

Chapter 4. Financial Responsibility

Sec. 1. A vehicle protection product shall not be sold or offered for sale unless the conditions set forth in at least one (1) of the following subdivisions are met to ensure adequate performance under the warranty:

(1) All of the following apply:

(A) The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy that is issued by an insurer authorized to do business in Indiana.

(B) The warranty reimbursement insurance policy

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provides that the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor legally is obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty.

(C) A true and exact copy of the warranty reimbursement insurance policy has been filed with the department by the warrantor.

(D) The warranty reimbursement insurance policy contains the provisions required under IC 27-18-5-1.

(2) All of the following apply:

(A) The vehicle protection product warrantor or its parent company maintains a net worth or stockholders' equity of at least fifty million dollars (\$50,000,000).

(B) The warrantor provides the commissioner with a copy of:

(i) the warrantor's most recent audited financial statement; or

(ii) the warrantor's parent company's audited financial statement;

showing a net worth of at least fifty million dollars (\$50,000,000).

(C) If clauses (A) and (B) are satisfied through the warrantor's parent company, the warrantor's parent company agrees to guarantee the obligations of the warrantor relating to warranties issued by the warrantor.

The financial information filed under this subdivision is confidential as a trade secret of the entity filing the information.

Sec. 2. No financial security requirements or financial standards for warrantors other than those set forth in section 1 of this chapter are required under this article.

Chapter 5. Warranty Reimbursement Policy Requirements

Sec. 1. A warranty reimbursement insurance policy may not be issued, sold, or offered for sale unless the policy meets the following conditions:

(1) The policy states that the issuer of the policy will:

(A) reimburse or pay on behalf of the vehicle protection product warrantor all covered sums that the warrantor is legally obligated to pay; or

(B) provide all service that the warrantor is legally obligated to perform according to the warrantor's

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contractual obligations under the provisions of the insured warranties issued by the warrantor.

(2) The policy states that if payment due under the terms of the warranty is not provided by the warrantor within sixty (60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement.

(3) The policy provides that:

(A) a warranty reimbursement insurance company that insures a warranty shall be considered to have received payment of the premium if the warranty holder paid for the vehicle protection product; and

(B) the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.

(4) The policy has the following provisions regarding cancellation of the policy:

(A) The issuer of a reimbursement insurance policy may not cancel the policy until a notice of cancellation in writing has been mailed or delivered to the commissioner and each insured warrantor.

(B) The cancellation of a reimbursement insurance policy may not reduce the issuer's responsibility for vehicle protection products sold before the date of cancellation.

(C) If an insurer cancels a policy that a warrantor has filed with the commissioner, the warrantor shall do one (1) of the following:

(i) File a copy of a new policy with the commissioner before the termination of the prior policy, to ensure that there is no lapse in coverage following the termination of the prior policy.

(ii) Discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the commissioner.

Chapter 6. Disclosure to Warranty Holder; Incidental Costs

Sec. 1. A vehicle protection product warranty may not be sold or offered unless the warranty does the following:

(1) States:

(A) "The obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy" if the warrantor elects to meet its

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- 1 financial responsibility obligations under IC 27-18-4-1(1);
 2 or
 3 (B) "The obligations of the warrantor under this warranty
 4 are backed by the full faith and credit of the warrantor" if
 5 the warrantor elects to meet its financial responsibility
 6 obligations under IC 27-18-4-1(2).
 7 (2) States that if a warranty holder must make a claim against
 8 a party other than the warranty reimbursement insurance
 9 policy holder, the warranty holder may make a direct claim
 10 against the insurer upon the failure of the warrantor to pay
 11 any claim or meet any obligation under the terms of the
 12 warranty within sixty (60) days after proof of loss has been
 13 filed with the warrantor, if the warrantor elects to meet its
 14 financial obligations under IC 27-18-4-1(1).
 15 (3) States the name and address of the issuer of the warranty
 16 reimbursement insurance policy. This information does not
 17 need to be preprinted on the warranty form, but may be
 18 added to or stamped on the warranty, if the warrantor elects
 19 to meet its financial obligations under IC 27-18-4-1(1).
 20 (4) Identifies the:
 21 (A) warrantor;
 22 (B) seller; and
 23 (C) warranty holder.
 24 (5) Sets forth the total purchase price and the terms under
 25 which the purchase price is to be paid. However, the purchase
 26 price is not required to be preprinted on the vehicle protection
 27 product warranty and may be negotiated with the consumer
 28 at the time of sale.
 29 (6) Sets forth the procedure for making a claim, and includes
 30 the name, mailing address, and telephone number of a contact
 31 representing the warrantor.
 32 (7) Sets forth the payments or performance to be provided
 33 under the warranty, including:
 34 (A) payment for incidental costs;
 35 (B) the manner of calculation or determination of payment
 36 or performance; and
 37 (C) any limitations, exceptions, or exclusions.
 38 (8) Sets forth all the obligations and duties of the warranty
 39 holder, including:
 40 (A) the duty to protect against any further damage to the
 41 vehicle;
 42 (B) the obligation to notify the warrantor in advance of

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any repair; or

(C) a similar requirement.

(9) Sets forth any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any.

(10) Contains a disclosure that reads substantially as follows:

"This agreement is a product warranty and is not insurance."

Sec. 2. Incidental costs may be reimbursed under the provisions of a vehicle protection product warranty by:

(1) a fixed amount specified in the warranty or sales agreement; or

(2) the use of a formula itemizing specific incidental costs incurred by the warranty holder.

Chapter 7. Record Keeping

Sec. 1. All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions subject to this article.

Sec. 2. A vehicle protection product warrantor's accounts, books and records must include:

(1) copies of all vehicle protection product warranties;

(2) the name and address of each warranty holder; and

(3) the dates, amounts, and descriptions of all receipts, claims, and expenditures.

Sec. 3. A vehicle protection product warrantor shall retain all required accounts, books, and records related to each warranty holder for at least two (2) years after the specified period of coverage has expired. A warrantor discontinuing business shall maintain the records of the business until the warrantor furnishes satisfactory proof to the commissioner that the warrantor has discharged all obligations to warranty holders in Indiana.

Sec. 4. A vehicle protection product warrantor shall make all accounts, books, and records concerning transactions regulated under this article available to the commissioner for examination at the expense of the warrantor.

Chapter 8. Rulemaking

Sec. 1. The department may adopt rules under IC 4-22-2 to implement this article. If rules are adopted, they must address the following issues:

(1) Disclosures for the benefit of the warranty holder.

(2) Record keeping.

(3) Procedures for public complaints.

(4) Conditions under which surplus line insurers may be

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rejected for the purpose of underwriting vehicle protection product warranty agreements.

Chapter 9. Prohibited Acts

Sec. 1. A vehicle protection product warrantor shall not use in the name, contracts, or literature of the vehicle protection product warrantor the words "insurance", "casualty", "surety", "mutual", or other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of an insurance or a surety corporation, or another vehicle protection product warrantor.

Sec. 2. A vehicle protection product seller or warrantor may not require that a retail purchaser of a vehicle purchase a vehicle protection product as a condition of financing.

Chapter 10. Sanctions and Administrative Penalties

Sec. 1. The commissioner may:

- (1) conduct examinations of warrantors, administrators, and other persons to enforce this article; and
- (2) take action necessary or appropriate to enforce this article and the rules of the department;

to protect warranty holders.

Sec. 2. If a warrantor engages in a pattern or practice of conduct that appears to violate this article and that the commissioner reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of a person, the commissioner shall:

- (1) notify the warrantor in writing specifically stating the alleged grounds for sanctions; and
- (2) hold a hearing under IC 4-21.5.

Sec. 3. If, after a hearing under section 2 of this chapter, the commissioner finds grounds for sanction, the commissioner may issue:

- (1) an order directed to the warrantor to cease and desist from engaging in further acts, practices, or transactions that are causing the conduct that violates this article;
- (2) an order prohibiting the warrantor from selling or offering for sale vehicle protection products in violation of this article;
- (3) an order imposing a civil penalty on the warrantor; or
- (4) a combination of orders under subdivisions (1) through (3), as applicable.

Sec. 4. The decision, determination, or order of the commissioner under section 3 of this chapter is subject to judicial

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review under IC 4-21.5.

Sec. 5. The commissioner may bring a civil action in the name of the state through the attorney general, in a circuit or superior court having jurisdiction in a county in which the warrantor does business or in which the property or business of a person may suffer loss or injury from the warrantor, to restrain the warrantor from commencing or continuing to violate any of the following:

- (1) This article.
- (2) A rule adopted under this article.
- (3) An order entered under this article.

Sec. 6. (a) In addition to an order issued against a warrantor under section 3 of this chapter, the commissioner may order the warrantor to pay the department a civil penalty in an amount determined by the commissioner of not more than five hundred dollars (\$500) per violation and not more than ten thousand dollars (\$10,000) total for all violations of a similar nature.

(b) For purposes of this section, violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct, action, or practice that is determined to be a violation of this article occurred.

(c) Civil penalties collected under this section shall be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 6. [EFFECTIVE JULY 1, 2008] (a) As used in this SECTION, "vehicle protection product" has the meaning set forth in IC 27-18-1-6, as added by this act.

(b) IC 27-18, as added by this act, applies only to a vehicle protection product sold or offered for sale after June 30, 2008.

SECTION 7. [EFFECTIVE JULY 1, 2008] (a) The definitions in IC 27-18-1, as added by this act, apply throughout this SECTION.

(b) The failure of a person to comply with IC 27-18, as added by this act, before July 1, 2008, is not admissible in a court proceeding, an administrative proceeding, arbitration, or an alternative dispute resolution proceeding and may not be used to prove that the action of a person or the affected vehicle protection product was unlawful or otherwise improper.

(c) The enactment of IC 27-18, as added by this act, does not imply that a vehicle protection product warranty was insurance before July 1, 2008.

SECTION 8. [EFFECTIVE JULY 1, 2008] IC 9-25-8-2, as amended by this act, applies only to offenses committed after June 30, 2008.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 195, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 20.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 195 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senator Walker be added as third author of Engrossed Senate Bill 195.

YOUNG R MICHAEL

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 195, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-2.1-22-46, AS AMENDED BY P.L.1-2006, SECTION 152, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 46. (a) Notwithstanding any other provision of this chapter, common and contract carriers and other carriers engaged in the transportation of passengers or household goods for hire, over regular or irregular routes, whether operating pursuant to a certificate or permit or as an exempt carrier under section 2.1(5) of this chapter, shall file with the department proof of financial

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responsibility in the form of surety bonds or policies of insurance or shall qualify as a self-insured. The minimum level of financial responsibility required shall be **as follows:**

(1) For a contract carrier that transports railroad employees, a combined single limit of three million dollars (\$3,000,000) for bodily injury and property damage in any one (1) accident.

(2) For a contract carrier, common carrier, or other carrier not described in subdivision (1), the minimum level established under 49 U.S.C. 13906(a)(1).

(b) A person who violates this section commits a Class C infraction. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment for violating this section.

(c) In addition to any other penalty imposed upon a person for a conviction of a Class A misdemeanor under subsection (b), the law enforcement agency may impound the vehicles owned by the person. Unless the vehicle is impounded or forfeited under a law other than this section, the vehicle shall be released to the carrier when the carrier complies with this section.

SECTION 2. IC 9-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. **(a)** Except as provided in section 7 of this chapter, an individual must:

(1) have a valid Indiana operator's, chauffeur's, or public passenger chauffeur's license; and

(2) be at least eighteen (18) years of age;

to drive a medical services vehicle upon an Indiana highway.

(b) Except as provided in section 7 of this chapter, an individual must have a valid public passenger chauffeur's license to operate a contract carrier vehicle that:

(1) is regulated under IC 8-2.1-22; and

(2) transports railroad employees upon an Indiana highway."

Page 2, line 7, delete "shall" and insert "**may**".

Page 2, line 8, delete "at least" and insert "**not more than**".

Page 2, line 8, delete "and not".

Page 2, line 9, delete "more than ten (10)".

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 4. IC 9-25-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 10. Judicial Reinstatement of Driving Privileges

Sec. 1. This chapter applies only to a person whose driving privileges have been suspended under IC 9-25-8-2 for failure to

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maintain proof of financial responsibility for a motor vehicle.

Sec. 2. As used in this chapter, "petitioner" means a person seeking to have the person's driving privileges reinstated or the period of suspension modified in accordance with this chapter.

Sec. 3. (a) A person whose driving privileges have been suspended under IC 9-25-8-2 may petition a court to:

- (1) reinstate the person's driving privileges; or
- (2) modify the period of suspension;

by filing a petition with the court that suspended the person's driving privileges.

(b) A petition filed under this section must include the following:

- (1) The date on which the person's driving privileges were suspended.
- (2) The period for which the person's driving privileges were suspended.
- (3) A description of any other penalties imposed on the person for failure to maintain proof of financial responsibility.
- (4) A list of all convictions or judgments the person has accumulated for failure to maintain proof of financial responsibility.
- (5) A brief description of why the person is entitled to relief under section 4(b) of this chapter.
- (6) A brief description of any other reasons that the person believes that the person is entitled to have the person's driving privileges reinstated or the period of suspension modified.

(c) A petition filed under this section must be verified.

Sec. 4. (a) After receiving a petition filed under this chapter, a court may:

- (1) summarily dismiss the petition; or
- (2) give notice to the prosecuting attorney and set the matter for hearing to determine whether the person's driving privileges should be reinstated or the period of suspension should be modified.

(b) A court may grant a petition filed under this chapter if the court finds that:

- (1) the circumstances that caused the petitioner to fail to maintain proof of financial responsibility:
 - (A) no longer exist; or
 - (B) are unlikely to reoccur;
- (2) the petitioner:
 - (A) is able to provide proof of financial responsibility; or
 - (B) will be able to provide proof of financial responsibility

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when the period of suspension is no longer in effect; and
 (3) the petitioner is likely to maintain proof of financial responsibility in the future.

Sec. 5. (a) If the court grants a petition under this chapter, the court shall recommend that the bureau reinstate the person's driving privileges or modify the period of suspension.

(b) Upon receiving the recommendation from the court under subsection (a), the bureau shall:

- (1) reinstate the person's driving privileges; or
- (2) modify the period of suspension;

in accordance with the recommendation of the court.

SECTION 5. IC 27-18 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

ARTICLE 18. VEHICLE PROTECTION PRODUCTS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Administrator" means a third party other than the warrantor that is designated by the warrantor to be responsible for the administration of vehicle protection product warranties.

Sec. 3. "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

Sec. 4. "Department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 5. "Incidental costs" means the expenses specified in the warranty that are incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs include:

- (1) insurance policy deductibles;
- (2) rental vehicle charges;
- (3) the difference between the:
 - (A) actual value of the stolen vehicle at the time of theft; and
 - (B) cost of a replacement vehicle;
- (4) sales taxes;
- (5) registration fees;
- (6) transaction fees; and
- (7) mechanical inspection fees.

Sec. 6. "Vehicle protection product" means a product that is designed to prevent the loss of or damage to a vehicle resulting from theft.

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Sec. 7. (a) "Vehicle protection product warrantor" or "warrantor" means a person that is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement.

(b) The term does not include an authorized insurer providing a warranty reimbursement insurance policy.

Sec. 8. "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent the loss of or damage to a vehicle from a specific cause, the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform under the terms of the warranty.

Sec. 9. "Warranty holder" means a person that:

- (1) purchases a vehicle protection product; or**
- (2) is a permitted transferee of a vehicle protection product.**

Sec. 10. "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to:

- (1) provide reimbursement to the warrantor for; or**
- (2) pay on behalf of the warrantor;**

all covered contractual obligations incurred by the warrantor under the terms and conditions of the vehicle protection product warranties issued by the warrantor.

Chapter 2. Applicability

Sec. 1. A vehicle protection product may not be sold or offered for sale unless a seller, warrantor, or administrator complies with this article.

Sec. 2. A warranty, indemnity agreement, or guarantee that is not provided as a part of a vehicle protection product is not subject to the provisions of this article.

Chapter 3. Registration of Vehicle Protection Product Warrantors

Sec. 1. Except as provided in section 5 of this chapter, a person may not:

- (1) operate as a warrantor; or**
- (2) represent to the public that the person is a warrantor;**

unless the person is registered with the department under this chapter.

Sec. 2. (a) A person who:

- (1) operates as a warrantor; or**
- (2) represents to the public that the person is a warrantor;**

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must register with the department by filing an application on a form prescribed by the commissioner.

(b) An application filed under subsection (a) must contain the following information:

- (1) The warrantor's name, any fictitious name under which the warrantor does business in Indiana, the principal location, mailing address, and telephone number of the warrantor, and corresponding information for any offices maintained in Indiana.
- (2) The name and address of the agent of the warrantor for service of process in Indiana, if other than the warrantor.
- (3) The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business.
- (4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties.
- (5) A copy of the warranty reimbursement insurance policy or policies or other financial information required by IC 27-18-4-1.
- (6) A copy of each warranty that the warrantor proposes to use.
- (7) A statement indicating under which subdivision of IC 27-18-4-1 the warrantor qualifies to do business as a warrantor.

Sec. 3. (a) A registration must be:

- (1) updated not later than thirty (30) days after any change that makes information previously provided under section 2(b) of this chapter no longer correct; and
- (2) renewed on an annual basis.

(b) If a warrantor registered under section 2 of this chapter fails to renew the registration by the registration deadline, and a renewal is not filed within thirty (30) days, the warrantor shall be made inactive by the commissioner.

Sec. 4. The department may establish:

- (1) a fee for the issuance of a registration; and
- (2) a fee for the renewal of registration;

under this chapter in an amount sufficient to implement this article. Fees collected under this section shall be deposited in the department of insurance fund established by IC 27-1-3-28.

Sec. 5. An administrator or person that sells or solicits a sale of

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a vehicle protection product but is not a warrantor is not required to register as a warrantor or to be licensed under this title to sell a vehicle protection product.

Chapter 4. Financial Responsibility

Sec. 1. A vehicle protection product shall not be sold or offered for sale unless the conditions set forth in at least one (1) of the following subdivisions are met to ensure adequate performance under the warranty:

(1) All of the following apply:

(A) The vehicle protection product warrantor is insured under a warranty reimbursement insurance policy that is issued by an insurer authorized to do business in Indiana.

(B) The warranty reimbursement insurance policy provides that the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor legally is obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty.

(C) A true and exact copy of the warranty reimbursement insurance policy has been filed with the department by the warrantor.

(D) The warranty reimbursement insurance policy contains the provisions required under IC 27-18-5-1.

(2) All of the following apply:

(A) The vehicle protection product warrantor or its parent company maintains a net worth or stockholders' equity of at least fifty million dollars (\$50,000,000).

(B) The warrantor provides the commissioner with a copy of:

(i) the warrantor's most recent audited financial statement; or

(ii) the warrantor's parent company's audited financial statement;

showing a net worth of at least fifty million dollars (\$50,000,000).

(C) If clauses (A) and (B) are satisfied through the warrantor's parent company, the warrantor's parent company agrees to guarantee the obligations of the warrantor relating to warranties issued by the warrantor.

The financial information filed under this subdivision is confidential as a trade secret of the entity filing the information.

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Sec. 2. No financial security requirements or financial standards for warrantors other than those set forth in section 1 of this chapter are required under this article.

Chapter 5. Warranty Reimbursement Policy Requirements

Sec. 1. A warranty reimbursement insurance policy may not be issued, sold, or offered for sale unless the policy meets the following conditions:

- (1) The policy states that the issuer of the policy will:**
 - (A) reimburse or pay on behalf of the vehicle protection product warrantor all covered sums that the warrantor is legally obligated to pay; or**
 - (B) provide all service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties issued by the warrantor.**
- (2) The policy states that if payment due under the terms of the warranty is not provided by the warrantor within sixty (60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement.**
- (3) The policy provides that:**
 - (A) a warranty reimbursement insurance company that insures a warranty shall be considered to have received payment of the premium if the warranty holder paid for the vehicle protection product; and**
 - (B) the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.**
- (4) The policy has the following provisions regarding cancellation of the policy:**
 - (A) The issuer of a reimbursement insurance policy may not cancel the policy until a notice of cancellation in writing has been mailed or delivered to the commissioner and each insured warrantor.**
 - (B) The cancellation of a reimbursement insurance policy may not reduce the issuer's responsibility for vehicle protection products sold before the date of cancellation.**
 - (C) If an insurer cancels a policy that a warrantor has filed with the commissioner, the warrantor shall do one (1) of the following:**
 - (i) File a copy of a new policy with the commissioner**

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before the termination of the prior policy, to ensure that there is no lapse in coverage following the termination of the prior policy.

(ii) Discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the commissioner.

Chapter 6. Disclosure to Warranty Holder; Incidental Costs

Sec. 1. A vehicle protection product warranty may not be sold or offered unless the warranty does the following:

(1) States:

(A) "The obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy" if the warrantor elects to meet its financial responsibility obligations under IC 27-18-4-1(1); or

(B) "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor" if the warrantor elects to meet its financial responsibility obligations under IC 27-18-4-1(2).

(2) States that if a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy holder, the warranty holder may make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty (60) days after proof of loss has been filed with the warrantor, if the warrantor elects to meet its financial obligations under IC 27-18-4-1(1).

(3) States the name and address of the issuer of the warranty reimbursement insurance policy. This information does not need to be preprinted on the warranty form, but may be added to or stamped on the warranty, if the warrantor elects to meet its financial obligations under IC 27-18-4-1(1).

(4) Identifies the:

- (A) warrantor;
- (B) seller; and
- (C) warranty holder.

(5) Sets forth the total purchase price and the terms under which the purchase price is to be paid. However, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(6) Sets forth the procedure for making a claim, and includes

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the name, mailing address, and telephone number of a contact representing the warrantor.

(7) Sets forth the payments or performance to be provided under the warranty, including:

- (A) payment for incidental costs;
- (B) the manner of calculation or determination of payment or performance; and
- (C) any limitations, exceptions, or exclusions.

(8) Sets forth all the obligations and duties of the warranty holder, including:

- (A) the duty to protect against any further damage to the vehicle;
- (B) the obligation to notify the warrantor in advance of any repair; or
- (C) a similar requirement.

(9) Sets forth any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any.

(10) Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

Sec. 2. Incidental costs may be reimbursed under the provisions of a vehicle protection product warranty by:

- (1) a fixed amount specified in the warranty or sales agreement; or
- (2) the use of a formula itemizing specific incidental costs incurred by the warranty holder.

Chapter 7. Record Keeping

Sec. 1. All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions subject to this article.

Sec. 2. A vehicle protection product warrantor's accounts, books and records must include:

- (1) copies of all vehicle protection product warranties;
- (2) the name and address of each warranty holder; and
- (3) the dates, amounts, and descriptions of all receipts, claims, and expenditures.

Sec. 3. A vehicle protection product warrantor shall retain all required accounts, books, and records related to each warranty holder for at least two (2) years after the specified period of coverage has expired. A warrantor discontinuing business shall maintain the records of the business until the warrantor furnishes satisfactory proof to the commissioner that the warrantor has

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discharged all obligations to warranty holders in Indiana.

Sec. 4. A vehicle protection product warrantor shall make all accounts, books, and records concerning transactions regulated under this article available to the commissioner for examination at the expense of the warrantor.

Chapter 8. Rulemaking

Sec. 1. The department may adopt rules under IC 4-22-2 to implement this article. If rules are adopted, they must address the following issues:

- (1) Disclosures for the benefit of the warranty holder.
- (2) Record keeping.
- (3) Procedures for public complaints.
- (4) Conditions under which surplus line insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

Chapter 9. Prohibited Acts

Sec. 1. A vehicle protection product warrantor shall not use in the name, contracts, or literature of the vehicle protection product warrantor the words "insurance", "casualty", "surety", "mutual", or other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of an insurance or a surety corporation, or another vehicle protection product warrantor.

Sec. 2. A vehicle protection product seller or warrantor may not require that a retail purchaser of a vehicle purchase a vehicle protection product as a condition of financing.

Chapter 10. Sanctions and Administrative Penalties

Sec. 1. The commissioner may:

- (1) conduct examinations of warrantors, administrators, and other persons to enforce this article; and
- (2) take action necessary or appropriate to enforce this article and the rules of the department;

to protect warranty holders.

Sec. 2. If a warrantor engages in a pattern or practice of conduct that appears to violate this article and that the commissioner reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of a person, the commissioner shall:

- (1) notify the warrantor in writing specifically stating the alleged grounds for sanctions; and
- (2) hold a hearing under IC 4-21.5.

Sec. 3. If, after a hearing under section 2 of this chapter, the

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commissioner finds grounds for sanction, the commissioner may issue:

- (1) an order directed to the warrantor to cease and desist from engaging in further acts, practices, or transactions that are causing the conduct that violates this article;
- (2) an order prohibiting the warrantor from selling or offering for sale vehicle protection products in violation of this article;
- (3) an order imposing a civil penalty on the warrantor; or
- (4) a combination of orders under subdivisions (1) through (3), as applicable.

Sec. 4. The decision, determination, or order of the commissioner under section 3 of this chapter is subject to judicial review under IC 4-21.5.

Sec. 5. The commissioner may bring a civil action in the name of the state through the attorney general, in a circuit or superior court having jurisdiction in a county in which the warrantor does business or in which the property or business of a person may suffer loss or injury from the warrantor, to restrain the warrantor from commencing or continuing to violate any of the following:

- (1) This article.
- (2) A rule adopted under this article.
- (3) An order entered under this article.

Sec. 6. (a) In addition to an order issued against a warrantor under section 3 of this chapter, the commissioner may order the warrantor to pay the department a civil penalty in an amount determined by the commissioner of not more than five hundred dollars (\$500) per violation and not more than ten thousand dollars (\$10,000) total for all violations of a similar nature.

(b) For purposes of this section, violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct, action, or practice that is determined to be a violation of this article occurred.

(c) Civil penalties collected under this section shall be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 6. [EFFECTIVE JULY 1, 2008] (a) As used in this SECTION, "vehicle protection product" has the meaning set forth in IC 27-18-1-6, as added by this act.

(b) IC 27-18, as added by this act, applies only to a vehicle protection product sold or offered for sale after June 30, 2008.

SECTION 7. [EFFECTIVE JULY 1, 2008] (a) The definitions in

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IC 27-18-1, as added by this act, apply throughout this SECTION.

(b) The failure of a person to comply with IC 27-18, as added by this act, before July 1, 2008, is not admissible in a court proceeding, an administrative proceeding, arbitration, or an alternative dispute resolution proceeding and may not be used to prove that the action of a person or the affected vehicle protection product was unlawful or otherwise improper.

(c) The enactment of IC 27-18, as added by this act, does not imply that a vehicle protection product warranty was insurance before July 1, 2008."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 195 as printed January 25, 2008.)

FRY, Chair

Committee Vote: yeas 8, nays 2.

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